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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

ELIAS G. MONTALVO,		Case No. 3:20-cv-00131-MMD-WGC
	Petitioner,	ORDER
v.		
ISIDRO BACA, <i>et al.</i> ,		
	Respondents.	

This case is a petition for a writ of habeas corpus filed under 28 U.S.C. § 2254 by Elias G. Montalvo, an individual incarcerated at the Northern Nevada Correctional Center. On February 25, 2020, Montalvo submitted his habeas corpus petition (ECF No. 1-1), along with an application to proceed *in forma pauperis* (ECF No. 1), a motion for appointment of counsel (ECF No. 1-3), a motion for evidentiary hearing (ECF No. 1-4), and a motion for leave to file excess pages (ECF No. 1-5). On March 2, 2020, Montalvo filed another motion for appointment of counsel (ECF No. 3).

On March 9, 2020, the Court denied Motalvo's application to proceed *in forma pauperis* and ordered him to pay the filing fee for this action (ECF No. 4). On March 18, 2020, Montalvo paid the fee (ECF No. 5).

Therefore, the Court has reviewed Montalvo's habeas petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Court will direct the Clerk of Court to serve the petition upon Respondents and will require a response.

The Court will deny Montalvo's motions for appointment of counsel (ECF No. 1-3 and 3). "Indigent state prisoners applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances of a particular case indicate that appointed

1 counsel is necessary to prevent due process violations.” *Chaney v. Lewis*, 801 F.2d 1191,  
2 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per  
3 curiam). The Court may, however, appoint counsel at any stage of the proceedings “if the  
4 interests of justice so require.” See 18 U.S.C. § 3006A; see also Rule 8(c), Rules  
5 Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. The Court determines that  
6 appointment of counsel is unwarranted in this case.

7 The Court will deny Montalvo’s motion for evidentiary hearing (ECF No. 1-4). That  
8 motion is premature. The denial of the motion is without prejudice to Montalvo making  
9 another such motion at an appropriate time, for example with his response to a motion to  
10 dismiss, or with his reply to an answer.

11 The Court will also deny Montalvo’s motion for leave to file excess pages (ECF No.  
12 1-5). That motion is unnecessary as the Court’s local rules do not set a page limit for  
13 habeas corpus petitions.

14 It is therefore ordered that the Clerk of Court is directed to separately file the  
15 petition for writ of habeas corpus (ECF No. 1-1), the motion for appointment of counsel  
16 (ECF No. 1-3), the motion for evidentiary hearing (ECF No. 1-4), and the motion for leave  
17 to file excess pages (ECF No. 1-5), which are currently attached to the *in forma pauperis*  
18 application.

19 It is further ordered that the Clerk of Court is directed to add Aaron D. Ford,  
20 Attorney General of the State of Nevada, as counsel for Respondents.

21 It is further ordered that the Clerk of Court is directed to electronically serve upon  
22 Respondents a copy of the petition for writ of habeas corpus and a copy of this order.

23 It is further ordered that Respondents will have 90 days from the date on which the  
24 petition is served upon them to appear in this action, and to answer or otherwise respond  
25 to the petition. If Respondents file an answer, Petitioner will have 60 days to file a reply  
26 to the answer. If Respondents file a motion to dismiss, Petitioner will have 60 days to file  
27 a response to the motion to dismiss, and then Respondents will have 30 days to file a  
28 reply to Petitioner’s response.

1           It is further ordered that Petitioner's motions for appointment of counsel (ECF No.  
2 1-3 and 3) are denied.

3           It is further ordered that Petitioner's motion for evidentiary hearing (ECF No. 1-4)  
4 is denied without prejudice.

5           It is further ordered that Petitioner's motion for leave to file excess pages (ECF No.  
6 1-5) is denied as unnecessary.

7           DATED THIS 20<sup>th</sup> day of March 2020.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU,  
CHIEF UNITED STATES DISTRICT JUDGE